IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 27.09.2007

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The Honourable Mr. Justice M. CHOCKALINGAM

W.P. Nos.10925 and 10926 of 2007

and

M.P. Nos.1+1 and 2+2 of 2007

S. Gunasekar ... Petitioner in W.P. No.10925/2007

M.V. Thangaswamy ... Petitioner in W.P. No.10926/2007

.vs..

State Bank of India,
rep. by its Assistant
General Manager (S&S),
(Disciplinary Authority)
Personnel and Human Resources
Development Section
Chennai Main Branch,
No.86, Rajaji Salai,
Chennai - 600 001. ... Respondent in W.P. No.10925/2007

State Bank of India,
rep. by its Deputy General Manager,
(Disciplinary Authority),
Overseas Branch
(MID-CORPORATE GROUP)
No.86, Rajaji Salai,
Chennai - 600 001. ... Respondent in W.P. No.10926/2007

Petitions under Article 226 of the Constitution of India, praying to issue a writ of of certiorari, after calling for the concerned records from the respondent, quash the charge memos dated 10.3.2007 and 7.3.2007 respectively issued by the respondents.

For Petitioner : Ms. R. Kamatchi Sundaresan

For Respondents : Mr. Somayajulu,
Sr. counsel for
Mr. S. Sethuraman

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COMMON ORDER

The petitioners have brought forth these writ petitions, seeking to issue a writ of certiorari, to quash the charge memos dated 10.3.2007 and 7.3.2007 respectively issued by the respondent viz. the State Bank of India.

2. Affidavits filed in support of the writ petitions and counter affidavits are perused. The Court heard the learned counsel appearing on either side.

3. The case of the petitioners seeking the relief in short is that the petitioner in W.P. No.10925/2007 is working as Special Assistant in the respondent-Bank, while the petitioner in W.P. No.10926 of 2007 is working as Deputy Manager. They are members of State Bank of India Ambedkar Trade Union, which is a registered one. The petitioner in W.P. No.10925 of 2007 is the elected General Secretary of the said Union. Quite often, huge chunk of money were missing from the currency chest of various branches of the respondent-Bank in Tamil Nadu. Since this was frequently happening, the Union was representing to the respondent-Bank to take effective steps in order to curb this and take action against the concerned personnel, but resulted in vain. There were specific occasions when the amounts were found missing and all those occasions, representations were made.

4. In one particular occasion, there was a missing of Rs.2.0 lakhs from Salem main branch of the respondent-Bank. One Mr. Subramanian, who was the Deputy General Secretary in the said Branch. Though there was a missing of around Rs.2.0 lakhs, without any action, he was transferred to Dharmapuri branch and again he was transferred to Salem branch within a short time, but no action was taken and he was allowed to retire. It was also noticed that there was an excessive borrowings to the tune of Rs.50.0 lakhs, which he was involved, but no action was taken.

5. Since no appropriate measures were taken, the Union, in order to bring an end, pasted a poster, which reflected only the real factual situation. A notice was issued by the respondent-Bank on 19.6.2006, threatening to take proceedings for defamation. A suitable reply was given on 19.7.2006. A civil suit was filed by the respondent-Bank in C.S. No.132 of 2007, claiming damages of Rs.11.0 lakhs. Though petition for interim injunction was filed, the same was not granted. Since no interim injunction was granted, being disturbed by the same, the respondent has issued charge memos on the petitioners on 10.3.2007 and 7.3.2007 respectively calling for their explanations. Under such circumstances, these writ

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petitions have been brought forth by the petitioners before this Court.

6. Advancing the arguments on behalf of the petitioners, learned counsel would submit that a legal notice was issued on 19.6.2006. The same was replied on 19.7.2006. What are all found in the posters pasted are not only bona fide but also true. It did not intend to defame anybody and not a defamatory statement. Following the same, a show-cause notice was issued on 19.6.2006 and the same was replied on 19.7.2006, but the Bank was not satisfied with the same and filed a suit in C.S. No.132 of 2007 claiming damages of Rs.11.0 lakhs. The suit was filed on 12.1.2007 against these petitioners and others.

7. While the matter stood thus, the respondent-Bank issued charge memos, containing four charges, on 10.3.2007 and 7.3.2007 respectively to the petitioners. In the charge memos, there is no specific finding of violation of any particular rule or regulation. Once they have exercised their option of filing a suit for recovery of damages, it would not be proper for the Bank to proceed with the disciplinary action.

8. Learned counsel would further add that once the contents of the charge memos are exactly same as the factual averments in the civil suit, it would not be fit and proper for the respondent-Bank to issue charge memos and calling for explanation and proceed with the same. Hence both the charge memos have got to be quashed.

9. Contrary to the above contentions, learned counsel for the respondent-Bank would submit that in the instant case, it is an admitted position that posters were pasted and it is also admitted that it is the collective act of the union. But one of these petitioners was Union Secretary and other petitioner was erstwhile President. Originally on 19.6.2006, a legal notice was issued and the writ petitioners gave untenable reply and a show cause was also issued on 30.8.2006 and 20.11.2006 respectively, which brought forth reply on 27.9.2006 and 4.1.2007 respectively. It was not the answer for the show-cause notice.

10. Thereupon, the respondent-Bank filed a suit in C.S. No.132 of 2007 for recovery of damages. It was only in respect of the tortious act committed by the petitioners, but what were issued are the charge memos containing four charges, which would be the outcome of the violation of the regulations of the Bank and thus the civil suit has nothing to do with the present charge memos. Since they are independent and separate, action should be taken in accordance with law. There is no bar or ban either for issuance of charge memo or for taking internal action, pursuant to which conducting of domestic enquiry. Hence, both the writ petitions have

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got to be dismissed.

11. The Court paid its anxious consideration on the submissions made by either side. After doing so, the Court is of the considered opinion that both the writ petitions do not carry any merit whatsoever. It is not in controversy that certain posters were pasted alleging that there was missing of money in different branches of the respondent-State Bank of India through out the State. According to the respondent-Bank, all these allegations were intended to impute the reputation of the Bank. According to the petitioners, they have claimed that they are not responsible for the same and the posters did not contain any defamatory statement and the contents in the posters are bona fide and true.

12. Thus, the Court does not want to go into the question, whether these allegations as contended by the respondent-Bank are defamatory or as contended by the writ petitioners are bona fide and true, which can be brought into only by way of appreciation of evidence in this regard. It is not in controversy that a legal notice was issued on 19.6.2007 by the respondent-Bank, which brought forth reply on 19.7.2006. A show cause notice was also issued on 30.8.2006 and 20.11.2006 respectively, which resulted in reply on 27.9.2006 and 4.1.2007 respectively.

13. While the matter stood thus, the respondent-Bank has filed a suit in C.S. No.132 of 2007 making a demand of damages of Rs.11.0 lakhs. Apart from this, now the charge memos have been issued against both the petitioners where the charges are as follows:-

> " Shri S. Gunasekar, Special Assistant, Chennai Main Branch, Chennai was reported to have committed certain irregularities as per the Articles of Charge detailed below:-
> Charges
> (i) Shri S. Gunasekar and others have unauthorisedly printed and displayed posters detrimental to the interest of the Bank.
> (ii) The posters displayed by Shri.S.Gunasekar and others contain defamatory statements which are prejudicial to the interest of the Bank.
> (iii) The posters displayed by Shri.S.Gunasekar and others contain a false and defamatory allegations against the entire officers – staff and management.
> (iv) Shri S. Gunasekar and others divulged the internal matters of the Bank with ulterior motive and malafide intentions during the pendency of the investigation/departmental action by the

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Bank, by displaying the said posters and thus caused damage to the reputation of the Bank.

Shri M.V. Thangasamy, Officer, MMGS II, Overseas Main Branch, Chennai was reported to have committed certain irregularities as per the Articles of Charge detailed below:-

Charges

(i) Shri M.V. Thangasamy and others have unauthorisedly printed and displayed posters detrimental to the interest of the Bank.

(ii) The posters displayed by Shri.M.V.Thangasamy and others contain defamatory statements which are prejudicial to the interest of the Bank.

(iii) The posters displayed by ShriM.V.Thangasamy and others contain a false and defamatory allegations against the entire officers - staff and management.

(iv) Shri M.V. Thangasamy and others divulged the internal matters of the Bank with ulterior motive and malafide intentions during the pendency of the investigation/departmental action by the Bank, by displaying the said posters and thus caused damage to the reputation of the Bank."

14. A reading of the charge memos would clearly indicate that the acts alleged to have been committed by them was irregularities as per the Articles of Charges. At this juncture, the contention put forth by the learned counsel for the petitioners that already a civil suit has been filed making a demand of Rs.11.0 lakhs as damages and on the same set of facts, the charge memo have been issued and hence, once the respondent-Bank exercised its option by initiating a civil suit for damages against the petitioners it would not be proper on their part to issue charge memos, though attractive, will not stand scrutiny of law for the simple reason that there was no ban of bar in law for the alleged act committed by the employees, though civil suit or criminal case would lie to initiate proceedings on the departmental side.

15. Further it has got to be made clear that insofar as the civil suit what is now filed by the respondent-Bank is concerned, the said suit is filed only for recovery of damages for the alleged tortious act committed by the petitioners and others, which was a civil liability. Insofar as charge memos are concerned, according to the respondent-Bank, the same were issued for violation of rules and regulations of the Bank. They are independent. Merely because civil suit has been filed by the respondent-Bank for recovery of damages, which has to be proved, there is no ban or bar for the respondent-Bank to issue the charge memos as one in question. So

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long as the petitioners are unable to show any ban or power for issuance of charge memos and proceeding with the domestic enquiry, there is no question of quashing the charge memos in question would arise. So long as it is established or shown by the petitioners, the Court is unable to agree with the findings of the petitioners or to quash the charge memos. The writ petitions fail and the same are dismissed. Consequently, the connected M.Ps. are also dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Assistant General Manager (S&S),
State Bank of India,
(Disciplinary Authority)
Personnel and Human Resources
Development Section
Chennai Main Branch,
No.86, Rajaji Salai,
Chennai - 600 001.

2. The Deputy General Manager,
State Bank of India,
(Disciplinary Authority),
Overseas Branch
(MID-CORPORATE GROUP)
No.86, Rajaji Salai,
Chennai - 600 001.

+2ccs to M/s. Balan Haridoss, Advocate Sr 60226 & 60225
+1cc to Mr.S.Sethuraman,Advocate Sr 60174

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